

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3222 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARVINDBHAI M PATEL

Versus

GOVERNMENT OF GUJARAT & OTHERS

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Appearance:

MR JD AJMERA for the Petitioner

MR NIGAM SHUKLA for Respondents no.1 and 2.

None present for other respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. On 14th August, 1981, this Court has issued notice in this case and further directed that it may be heard with Special Civil Application No.3137 of 1981. Interim relief has also been granted to the petitioner. Then on 15th September, 1981, rule was issued and interim relief was ordered to be continued and it has been ordered to be heard with Special Civil Application No.3137 of 1981.

The learned counsel for the petitioner has produced the copy of the judgment of this court in Special Civil Application No.3137 of 1981. This Special Civil Application has been decided by this court on 21st December, 1993.

2. The ad-interim relief has been prayed by the petitioner in Para no.15(iv) of Special Civil Application which reads as under:

pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to issue an ad interim injunction restraining the respondents in any manner implementing the order passed by the respondent No.3 dated 1-8-1981.

3. Under the letter dated 1-8-1981, the District Primary Education Officer, Vadodara, wrote to the Principal of Vidhya Vikas Primary School that the teacher holding the teaching diploma is to be treated as untrained teacher. It has further been ordered under that letter that the salary of such teacher should be drawn as untrained teacher. The petitioner has come up with a case before this court that he was appointed in the year 1969-70. He was having the qualification of S.S.C. with teaching diploma and it was considered to be a qualification sufficient for a trained teacher. He joined the respondent school in the year 1971 and he was given the salary of trained teacher. At no point of time, this objection has been raised by the departmental authorities.

4. The Education department has written a letter to respondent no.2 on 17th July, 1967 wherein it has been stated that those teacher who are in service as on 1st January, 1967 should be treated as equivalent to Junior P.T.C. trained teachers though they are possessing the qualification of diploma in teaching and they should be paid accordingly.

5. The counsel for the petitioner contended that despite of the aforesaid Government resolution, the appointment has been given to the petitioner in the pay scale of trained teacher and after more than 14 years this benefit could not have been taken from him. It cannot be said to be ignorance of such circular or some error. There is no justification in the action of the respondent to now treat the petitioner to be untrained and put him to monetary loss.

6. The learned counsel for the petitioner contended that somewhat similar issued was there in Special Civil

Application No.3137 of 1981, and this Court though considered that the qualification of diploma in education may not be qualification of P.T.C., but nevertheless after many years of the appointment, it seems to be no justification to reduce the pay scale of those class of persons. In the aforesaid facts this Court has given the direction that the petitioner therein should be treated as trained teacher for the purpose of protecting salary and retirement benefits. The counsel for the petitioner has contended that the issue involved in this case is squarely covered by the said decision. In case, the petitioner considered that the issue involved in this case is squarely covered by the decision of this Court in this Special Civil Application No.3137 of 1981 it is advisable for him to first bring this fact to the notice of respondent no.2 and respondent no.2 will decide this matter on merits. I consider it to be appropriate course for another reason that this Court has protected the petitioner for all these years by grant of interim relief. I further consider it to be a fit case where interest of justice will be met in case this Special Civil Application is disposed of with the directions that the petitioner may make a representation regarding the grievance which has been made by him in this Special Civil Application to the respondent no.2 within a period of two months from today. The petitioner alongwith the representation may also file a zerox copy of the decision in the Special Civil Application no.3137 of 1981 as well as a copy of the interim relief which has been passed by this Court. The respondent no.2 shall decide the representation of the petitioner within a period of three months thereafter. While considering the representation of the petitioner, the respondent no.2 will take into consideration the decision of this Court in the aforesaid Special Civil Application as well as the fact that this Court has protected the petitioner for all these years. In case the grievance of the petitioner is not acceptable, the the respondent no.2 may make a reasoned order and a copy of the same may be sent to the petitioner by registered post. Rule is made absolute in the aforesaid terms.

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